

**Puah Bee Hong @ Bee Hong (F) & Anor. v. Pentadbir Tanah Daerah  
Wilayah Persekutuan Kuala Lumpur & Anor.  
(Robert Teo Keng Tuan, Intervener) & Another Case**

[1994] 2 CLJ

Peh Swee Chin SCJ

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**PUAH BEE HONG @ BEE HONG (F)  
& ANOR.**

**v.**

**PENTADBIR TANAH DAERAH  
WILAYAH PERSEKUTUAN KUALA  
LUMPUR & ANOR. (ROBERT TEO  
KENG TUAN, INTERVENER) &  
ANOTHER CASE**

SUPREME COURT, KUALA LUMPUR  
TAN SRI DATUK GUNN CHIT  
TUAN CJ (MALAYA),

TAN SRI DATO' HAJI MOHD AZMI BIN  
DATO' HAJI KAMARUDDIN SCJ,

DATO' PEH SWEE CHIN SCJ

[CIVIL APPEALS NOS 01-31-92 & 02-362-93]  
3 JUNE 1994

**INTERPRETATION: Stay of proceedings - Whether an order of stay of proceedings directed at the Land Administrator amounted to an injunction and prohibited by s. 29(1)(a) Government Proceedings Act 1956 and s. 54(d) Specific Relief Act 1950.**

**LAND LAW: Sale of charged property - Land Administrator proceeded with auction in defiance of an order of Court for stay of proceedings - Effect - Land Administrator not served with order but had prior knowledge of same - Whether order binding - Whether Land Administrator acted illegally - Whether auction thereof null and void.**

**ADMINISTRATIVE LAW: Inferior and superior tribunals - Scope of relationship - Disobedience by inferior tribunal - Order of stay of proceedings by superior tribunal - Whether order could be disobeyed with impunity - Order set aside after acts of disobedience committed - Whether disobedience obliterated.**

This case involved two separate appeals by the appellants. The facts were that the appellants charged their land together with the house built thereon to the second respondent, Pacific Bank Berhad (the bank). Pursuant to an enquiry under s. 263 National Land Code held before the first respondent, the bank on 13 June 1989 obtained an order of sale of the charged land by way of public auction, scheduled then for 17 August 1989. On 16 August 1989, the day before the auction date, the appellants obtained a stay order against the said order of sale, as well as an order requiring the first respondent to hold another enquiry to determine afresh the reserve price of the charged property. The appellants'

*a* application for an injunction to restraint the respondents from proceeding with the auction was however refused.

As the first respondent was absent when the learned Judge issued the stay order aforesaid, the bank's solicitor, on the day of the auction but prior to the start of the auction, made a phone call to the first respondent informing the latter of the stay order. This message was however ignored by the first respondent and the auction was thus allowed to proceed as scheduled. And by 10.15 a.m. that 17 August 1989 the auction was completed on the bid of Robert Teo Keng Tuan, the intervener in this case.

*c* Subsequently, the intervener and the first respondent applied to set aside the said order of stay and on 12 August 1992 the High Court allowed the application and set aside the said stay order and further dismissed the originating summons application of the appellants. It was ruled by the learned Judge that the said stay order was equivalent to an injunction and therefore invalid by virtue of s. 29(1)(a) of the Government Proceedings Act 1956 and s. 54(d) of the Specific Relief Act 1950. This decision of the learned Judge formed the subject matter of the first appeal by the appellants *vide* Civil Appeal No. 01-31-92.

*e* Pursuant to his successful bid on the charged property, the intervener also applied for vacant possession of the same under O. 89 Rules of the High Court 1980 and on 25 June 1993 a summary order was made by the learned Judge ordering vacant possession thereof to the intervener. Against this order the appellants also appealed and this formed the subject matter of the second appeal herein *vide* Civil Appeal No. 02-362-93.

*g* The primary issues that arose were:

- (1) Whether an order of stay of proceedings directed at the Land Administrator amounts to an injunction so as to be amenable to s. 29(1)(a) of the Government Proceedings Act 1956 and s. 54(d) of the Specific Relief Act 1950 and is therefore barred by the said sections.
- (2) Whether an order of High Court can be disobeyed with impunity and if not, apart from the consideration of contempt proceedings, what then was the effect of such disobedience.

*i*

**Held:**

[1] The excuses of the Land Administrator for proceeding with the auction that he could not rely on the phone call from the solicitor for the bank and that he should be served with a copy of the order of stay were unacceptable. Service of the copy of such order was not essential as the essence being that the Land Administrator should have knowledge of it. What he did was highly questionable.

[2] In this case injunction was applied for expressly by the appellants but not granted and an order of stay was given only in terms of one of the prayers. This being the case there was no basis for treating the order of stay as an injunction as the learned Judge did. The learned Judge's reasoning could only have substance if the alternative prayers for the restraining orders of the originating summons had been granted. Be that as it may, an order for staying proceedings or for staying execution of an order of a lower Court or an inferior tribunal is not an injunction as there are distinctive dissimilarities between the two reliefs.

[3] The High Court has jurisdiction to issue an order of stay of sale of charged land to a Land Administrator on any ground that are sufficient. Apart from the Rules of the High Court, the High Court has always had that inherent jurisdiction to order stay of proceedings to prevent any abuse of process. It is also the rule that where a superior Court of record such as the High Court or Courts above it has the jurisdiction or discretion to decide any cause or matter by way of appeal, judicial review or otherwise, such superior Court will always have the inherently incidental power to suspend the operation or execution of any order concerned in such cause or matter pending the decision of such Court. In the circumstances the learned Judge is wrong in coming to the view that an order like the order of stay in the instant appeal is equivalent to an injunction and therefore amenable to the relevant sections of the Government Proceedings Act 1956 and the Specific Relief Act 1950.

[4] As the facts showed that the reserve price was correctly computed and as the appellants were duly served with the notice of hearing of the enquiry which gave rise to the order of sale, there was no basis upon which the appellants could properly base their originating summons application for the order of stay of proceedings

*a* and therefore the said order of stay was properly set aside by the learned Judge. The order of the High Court dated 12 August 1992 is therefore upheld and consequently the order dated 16 August 1989 is set aside and the originating summons therein dismissed.

*b* [5] It is the plain and unqualified obligation of every person against whom or in respect of whom an order is made by a Court of competent jurisdiction to obey the order until the same is discharged. It follows that an order of a superior Court such as the High court, until it is set aside, must be obeyed by everyone whether its validity is challenged or not. Hence, in the instant case, notwithstanding that the order of stay had been properly set aside by the learned Judge, that alone could not obliterate the disobedience of the Land Administrator to the stay order prior to its discharge so as to render such disobedience harmless.

*d* [6] The Land Administrator on 17 August 1989 had disobeyed the order of stay which was still then in force. He had therefore acted illegally and the consequence was that the said public auction was rendered null and void. Even though the order of stay was subsequently set aside after the public auction, it would not validate the pre-existing invalidation of the said auction which was illegally held.

*e* [7] In the circumstances, Civil Appeal No 02-362-93 against the order of the High Court made on 25 June 1993 granting vacant possession of the charged property to the intervener is allowed and the intervener is to deliver up vacant possession of the charged property without being liable to make payment for rent to the respondents. Likewise Civil Appeal No 01-31-92 is dismissed and the first respondent or the second respondent as the case may be is to refund the purchase price as paid by the intervener for the charged property and the first respondent is to hold a fresh public auction for the sale of the charged property.

*f* [Civil Appeal 01-31-92 dismissed and Civil Appeal 02-362-93 allowed subject to terms and conditions stipulated therefor].

*g* [Editorial Note: On the issue of whether contempt proceedings could specifically be instituted against the officers of the Crown for disobeying a Court order please refer to the House of Lords decision in *In Re M (A.P.)* reported in [1993] 3 CLJ 567].

*i*

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[Bahasa Malaysia Translation of Headnote]

**PENTAFSIRAN:** *Penggantungan prosiding - Sama ada perintah untuk penggantungan prosiding yang ditujukan kepada Pentadbir Tanah terjumlah kepada suatu injunksi dan dihalang oleh s. 29(1) (a) Akta Prosiding Kerajaan 1956 dan s. 54(d) Akta Relief Spesifik 1950.*

**UNDANG-UNDANG TANAH:** *Penjualan harta yang digadaikan-Pentadbir Tanah meneruskan lelongan dan melanggar perintah Mahkamah untuk penggantungan prosiding - Kesan - Perintah tersebut tidak disampaikan kepada Pentadbir Tanah tetapi beliau telahpun mengetahui mengenainya terlebih dahulu - Sama ada perintah tersebut mengikat - Sama ada Pentadbir Tanah bertindak menyalahi undang-undang - Sama ada lelongan tersebut menjadi terbatal dan tidak sah.*

**UNDANG-UNDANG PENTADBIRAN-Tribunal tinggi dan rendah -Skop perhubungan - Ketidakpatuhan oleh tribunal rendah - Penggantungan prosiding oleh tribunal tinggi - Sama ada perintah boleh diingkari atas pengecualian - Perintah diketepikan selepas tindakan ketidakpatuhan dilakukan - Sama ada ketidakpatuhan boleh diketepikan.**

Kes ini melibatkan dua rayuan yang berasingan oleh perayu. Fakta-faktanya ialah bahawa perayu telah menggadaikan tanah mereka bersama-sama dengan rumah yang dibina di atasnya kepada responden kedua, Pacific Bank Berhad (Bank tersebut). Berikutan suatu siasatan di bawah s. 263 Kanun Tanah Negara yang telah diadakan di hadapan responden pertama, Bank tersebut pada 13 Jun 1989 telah memperolehi perintah untuk menjual tanah yang digadaikan itu melalui lelongan awam yang dijadualkan pada 17 Ogos 1989. Pada 16 Ogos 1989, sehari sebelum tarikh lelongan, perayu telah memperolehi perintah penggantungan ke atas perintah jualan tersebut, dan juga perintah yang menghendaki responden pertama supaya mengadakan satu lagi siasatan untuk menentukan semula harga rizab bagi harta yang digadaikan itu. Walau bagaimanapun permohonan oleh perayu untuk injunksi bagi menghalang responden daripada meneruskan dengan lelongan berkenaan telah ditolak.

Memandangkan responden pertama tidak hadir apabila Hakim yang bijaksana tersebut mengeluarkan perintah penggantungan yang tersebut di atas, peguamcara Bank, pada hari

a lelongan, tetapi sebelum bermulanya lelongan berkenaan, membuat panggilan telefon kepada responden pertama memberitahu beliau mengenai perintah penggantungan tersebut. Walau bagaimanapun makluman ini telah tidak diperdulikan oleh responden pertama dan dengan itu lelongan pun diteruskan sebagaimana yang dijadualkan. Menjelang jam 10.15 pagi pada 17 Ogos 1989 tersebut lelongan pun selesai dijalankan dan penawar-belinya ialah Robert Teo Keng Tuan, pencilah dalam kes ini.

c Berikutan dengan itu, pencilah dan responden pertama telah memohon untuk mengeneipkan perintah penggantungan tersebut dan pada 12 Ogos 1992 Mahkamah Tinggi telah membenarkan permohonan tersebut dan mengeneipkan perintah penggantungan dan seterusnya menolak permohonan saman semula oleh perayu. Hakim yang bijaksana tersebut memutuskan bahawa perintah penggantungan itu adalah bersamaan dengan suatu injunksi dan oleh yang demikian ia adalah tidak sah di bawah s. 29(1)(a) Akta Prosiding Kerajaan 1956 dan s. 54(d) Akta Relief Spesifik 1950. Keputusan oleh Hakim yang bijaksana ini merupakan hal perkara rayuan pertama oleh perayu melalui Rayuan Sivil No. 01-31-92.

f Berikutan dengan kejayaannya dalam menawar-beli harta yang digadaikan itu, pencilah juga memohon untuk milikan kosong ke atasnya di bawah Aturan 89, Kaedah-kaedah Mahkamah Tinggi 1980 dan pada 25 Jun 1993 satu perintah terus telah dibuat oleh Hakim yang bijaksana tersebut yang memerintahkan supaya milikan kosong diberikan kepada pencilah. Perayu telah membuat rayuan ke atas perintah ini dan ini merupakan hal-perkara rayuan kedua dalam tindakan ini melalui Rayuan Sivil No. 02-362-93.

Isu-isu utama yang dibangkitkan ialah:

1. Sama ada perintah penggantungan yang ditujukan kepada Pentadbir Tanah terjumlah kepada suatu injunksi dan tertakluk kepada s. 29(1)(a) Akta Prosiding Kerajaan 1956 dan s. 54(d) Akta Relief Spesifik 1950 dan oleh yang demikian dihalang oleh seksyen-seksyen tersebut.
2. Sama ada perintah Mahkamah Tinggi boleh tidak dipatuhi dengan

mengengkarinya dan jika tidak, selain daripada yang bersifat tindakan menghina, apakah kesan lain daripada ketidakpatuhan seperti itu.

### Diputuskan:

[1] Alasan yang diberikan oleh Pentadbir Tanah dalam meneruskan dengan lelongan tersebut bahawa beliau tidak dapat bergantung kepada panggilan telefon daripada peguamcara Bank dan bahawa sesalanan perintah penggantungan haruslah disampaikan kepada beliau adalah tidak boleh diterima. Penyampaian salinan perintah penggantungan itu tidaklah penting di mana kepentingannya ialah bahawa Pentadbir Tanah sepatutnya mempunyai pengetahuan mengenainya. Apa yang telah dilakukan oleh beliau adalah amat diragui.

[2] Dalam kes ini, injunksi telah dipohon dengan nyatanya oleh perayu tetapi tidak diberikan dan perintah penggantungan hanya diberikan mengikut salah satu daripada pohonan tersebut. Oleh yang demikian tiada alasan untuk menyifatkan perintah penggantungan tersebut sebagai suatu injunksi sebagaimana yang dibuat oleh Hakim tersebut. Sebab yang diberikan oleh Hakim tersebut hanya akan mempunyai kepentingannya jika pohonan lain bagi perintah halangan dalam saman pemula turut diberikan. Jika sekalipun begitu, perintah bagi penggantungan prosiding atau menggantung perlaksanaan perintah sesebuah Mahkamah Rendah atau tribunal yang rendah bukanlah merupakan injunksi kerana terdapat perbezaan yang amat ketara di antara kedua-dua relief tersebut.

[3] Mahkamah Tinggi mempunyai bidang kuasa untuk memberikan perintah penggantungan menjual tanah yang digadaikan kepada Pentadbir Tanah atas apa jua alasan yang secukupnya. Selain daripada Kaedah-kaedah Mahkamah Tinggi, Mahkamah Tinggi mempunyai bidang kuasa sedia ada bagi memerintahkan penggantungan prosiding untuk menghalang sebarang penyalahgunaan proses. Juga telah termaktub sebagai undang-undang bahawa di mana sesebuah Mahkamah yang tinggi seperti Mahkamah Tinggi atau Mahkamah-mahkamah yang lebih tinggi daripadanya mempunyai bidang kuasa atau budibicara untuk memuluskan mana-mana kuasa atau perkara melalui rayuan, semakan kehakiman atau sebaliknya, Mahkamah yang

*a* tinggi seperti itu selalunya mempunyai kuasa sampingan sedia ada untuk menggantung operasi atau perlaksanaan mana-mana perintah yang berkenaan dalam kausa atau perkara yang menunggu untuk keputusan Mahkamah seperti itu. Dalam hal ini Hakim yang bijaksana tersebut adalah tersilap dalam berpendapat bahawa sesuatu perintah seperti perintah penggantungan dalam rayuan ini adalah bersamaan dengan suatu injunksi dan oleh yang demikian ia hendaklah mematuhi seksyen-seksyen yang relevan dalam Akta Prosiding Kerajaan 1956 dan Akta Relief Spesifik 1950.

*b* [4] Memandangkan fakta-faktanya menunjukkan bahawa harga rizab telah dihitung dengan betul dan notis pendengaran mengenai siasatan tersebut yang membawa kepada perintah jualan telah sempurna disampaikan kepada perayu, tiada sebarang alasan untuk perayu menyandarkan permohonan saman pemula mereka untuk perintah penggantungan tersebut dan oleh yang demikian telah diketepikan oleh Hakim yang bijaksana tersebut. Oleh yang demikian perintah Mahkamah Tinggi yang bertarikh 12 Ogos 1992 adalah dikekalkan dan berikutan dengannya perintah bertarikh 16 Ogos 1989 adalah diketepikan dan saman pemula di dalamnya itu adalah ditolak.

*c* [5] Adalah menjadi kewajipan setiap orang untuk mematuhi perintah yang dibuat oleh sesebuah Mahkamah terhadap mereka sehinggalah mereka dibebaskan. Maka, perintah yang dibuat oleh sesebuah Mahkamah yang tinggi seperti Mahkamah Tinggi mestilah dipatuhi oleh setiap seorang sehinggalah ia diketepikan tidak kira sama keesahannya dicabar atau tidak. Maka dalam kes semasa ini, meskipun perintah penggantungan telah diketepikan dengan sewajarnya oleh Hakim yang bijaksana tersebut, tidak cukup untuk menyingkirkan ketidakpatuhan oleh Pentadbir Tanah ke atas perintah penggantungan tersebut sebelum ia dilepaskan dan menyifatkan ketidakpatuhan seperti itu sebagai tidak ada apa-apa.

*d* [6] Pentadbir Tanah telah pada 17 Ogos 1989 mengengkar perintah penggantungan yang masih berkuatkuasa pada ketika itu. Oleh yang demikian beliau telah bertindak menyalahi undang-undang dan akibatnya lelongan awam tersebut telah disifatkan sebagai tidak sah dan terbatal. Walaupun

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perintah penggantungan itu kemudiannya diketepikan selepas lelongan awam tersebut, ia tidak akan mengesahkan kewujudan ketidakesahan lelongan tersebut yang diadakan secara menyalahi undang-undang.

[7] Dalam hal ini, Rayuan Sivil No. 02-362-93 terhadap Perintah Mahkamah yang dibuat pada 25 Jun 1993 yang memberikan milikan kosong harta yang digadaikan itu kepada pencelah adalah dibenarkan dan pencelah hendaklah menyerahkan milikan kosong harta yang digadaikan tersebut tanpa bertanggungjawab untuk membuat apa-apa bayaran sewa kepada responden. Begitu juga, Rayuan Sivil No. 01-31-92 adalah ditolak dan responden pertama atau responden kedua sebagaimana yang berkenaan hendaklah memulangkan harga belian yang dibayar oleh pencelah bagi harta yang digadaikan itu dan responden pertama hendaklah mengadakan lelongan awam yang baru untuk menjual harta yang digadaikan itu.

[Rayuan Sivil 01-31-92 ditolak dan Rayuan Sivil 02-362-93 dibenarkan tertakluk kepada terma-terma dan syarat-syarat yang tersebut di dalamnya itu].

**Cases referred to:**

*Ho Kok Thin & Ors v. The Sheriff/Registrar of the High Court of Borneo & Anor* [1989] 3 MLJ 181 (**dist**)  
*Government of Malaysia v. Lim Kit Siang* [1988] SCR 11 (**dist**)  
*Hadkinson v. Hadkinson* [1952] 2 All ER 567 (**foli**)  
*Pembinaan KSY Sdn Bhd v. Lian Seng Properties Sdn Bhd* [1991] 1 MLJ 100 (**foli**)  
*Issacs v. Robertson* [1984] 3 All ER 140  
*Eu Finance Bhd v. Lim Yoke Foo* [1982] 2 MLJ 37 FC (**refd**)  
*Dunlop v. Woolahra Municipal Council* [1982] AC 158 (**refd**)  
*Re Khoo Kim Hock* [1974] 2 MLJ 29 (**refd**)

**Legislation referred to:**

Government Proceedings Act 1956, s. 29(1)(a)  
National Land Code, s. 263  
Rules of the High Court 1980, O. 89  
Specific Relief Act 1950, ss. 29, 54(d)

**Other sources referred to:**

**Nelson's Law of Injunctions**, 2nd Edn.,

*For the 1st & 2nd appellants - K.S. Dass (Kalaimany with him); M/s Kalai & Partners*  
*For the 1st respondent - Abu Bakar Jais*  
*For the 2nd respondent - Leela Jesuthasan; M/s Chew Kar Meng & Partners*  
*For the intervener - R. Abraham (M.K. Eng with him); M/s M.K. Eng & Associates*

*a For the respondent - C.H. Liew (M.K. Eng with him); M/s M.K. Eng & Associates (Civil Appeal No. 02-362-93)*

**JUDGMENT**

**Peh Swee Chin SCJ:**

*b* Both the appeals have been heard together, as they involve more or less the same parties and the same subject matter. In Civil Appeal No 01-31-92 however, all the parties are together in the same appeal and it would be far more appropriate to deal with this appeal in this judgment so that decision of liability of this appeal will help us very conveniently dispose of the other appeal at the same time. The issues are really few after scrutiny of documents and submissions though they involve so many other subsidiary but not determinative of the appeals, sub-issues that put us in danger at times of being unable to see the wood for the trees.

*d* We will now deal with Civil Appeal No 01-31-92.

Some of the few questions that arise are, (a) as to whether an order of stay of proceedings directed at the Land Administrator, the 1st respondent herein, amounts to an injunction so as to be amenable to s. 29(1)(a) of the Government Proceedings Act 1956 and also s. 54(d) of the Specific Relief Act 1950 and is therefore barred by the said sections, and (b) as to whether an order of High Court can be disobeyed with impunity and if not, apart from the consideration of contempt proceedings, as to what then is the effect of such disobedience.

*f* The appellants (hereafter the chargors) had charged their land together with the house built thereon to the 2nd respondent (hereafter the bank) who obtained an order of sale in an enquiry under s. 263 of the National Land Code before the 1st respondent, (hereafter the Land Administrator). The intervener was the successful bidder at a public auction held in pursuance of the said order of sale and it was this public auction that has been very much impugned at the hearing of this appeal, (the land with the house thereon is hereafter the charged property).

The chargors, (on the grounds that they had not been duly served with the notice of hearing of the enquiry in which the reserve price was fixed and the order of sale obtained; and further that the reserve price at RM500,000 was in any event too low and ought to have been RM615,000),

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filed the Originating Summons No S7-21-349-89 which is set out below with its sub-heading only:

Between

- 1 Puah Bee Hong @ Bee Hong (f)
- 2 Khoo Tian

Applicants

And

1. Pentadbir Tanah Daerah  
Wilayah Persekutuan,  
Kuala Lumpur
2. Pacific Bank Berhad

Respondents

*Originating Summons*

*(Ex-Parte)*

Let All Parties Concerned attend before the Judge on 16 August 1989 at 2.30 p.m. on the hearing of an application of the applicants for the following reliefs:

- (a) That the order for sale made by the first respondent on 13 June 1989, in respect of a property owned by the applicants and known as B.M. 1434, Lot No 43948 and M.G. 7 Lot No 8351 be stayed pending further direction of the Honourable Court.
- (b) That in the alternative, the first respondent be restrained from proceeding to sell by public auction on 17 August 1989, of two properties held by the applicants and known as G.M. 1434, Lot No 43948 and M.G. 7 Lot No 8351 until further order of this Honourable Court.
- (c) That in the alternative the second respondent be restrained from proceeding with a public auction on 17 August 1989, of two properties owned by the applicants and known as G.M. 1434, Lot No 43948 and M.G. 7 Lot No 8351 until further order of this Honourable Court.
- (d) An order that the first respondent do determine the reserve price of two properties known as G.M. 1434, Lot No 43948 and M.G. 7 Lot No 8351 pursuant to s. 263(2)D National Land Code Act No 56 of 1965 within 4 months after holding an enquiry between the applicants and the second respondent as the Honourable Court may deem fit.
- (e) Further or other consequential directions.
- (f) The costs of this application be costs in the cause.

Dated 14 August 1989.

Sgd.  
Senior Assistant Registrar

Sgd.  
Solicitors for the Applicants

**a** The originating summons was herein served on both the cited parties viz the Land Administrator and the bank and on 16 August 1989 the order was granted by the learned Judge. The order is similarly set out below:

**b**

Upon The Application of the applicants in this action And Upon Reading the Originating Summons dated 14 August 1989, and the affidavit of Puah Bee Hong @ Bee Hong (f) and Khoo Thian affirmed on 14 August 1989, and filed herein And Upon Hearing Mr D. Kalaimany of Counsel for the applicants and Miss Indrani of Counsel for the second respondent and in the absence of the first respondent It Is Hereby Ordered that the order for sale made by the first respondent on the 13 June 1989, in respect of properties owned by the applicants and known as G.M. 1434 Lot No 43948 and M.G. 7 Lot No 8351 be stayed And It Is Further Ordered that the first respondent do determine the reserve price of two properties known as G.M. 1434 Lot No 43948 and M.G. 7 Lot No 8351 pursuant to s. 263(2)D National Land Code within four (4) months from the date of the order to hold an enquiry between the applicants and the second respondent It Is Also Ordered that the applicants shall pay all costs and expenses in calling off the auction to be held on 17 August 1989, And It Is Lastly Ordered that the expenses for holding an enquiry and auction be paid out of the proceeds of the seal.

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It will be noticed that this order was incidentally in fact a final order leaving nothing more to be adjudicated; it having also been made after necessary service of parties required to be served. The order by which the said order of sale was stayed, was in the nature of a stay of execution of the said order of sale coupled with the holding of another enquiry before the Land Administrator again, within 4 months thereafter, to determine the reserve price afresh and therefore make an order of sale again. From the originating summons herein, it will be obvious that what was granted was not either a restraining order directed to the Land Administrator or a similar restraining order against the bank respectively in terms of prayers (b) and (c) of the said originating summons but an order in terms of prayer (a) therein, made in the presence of the bank's solicitor but in the absence of the Land Administrator who was absent though he had been served. This order, (for convenience it is hereafter called the order of stay), was apparently obtained by the chargors at the eleventh hour as litigants are often wont to.

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In the meantime, the public auction sought to be stopped to make way for the new enquiry for a new order of sale was scheduled for the following day that is, 17 August 1989.

The Land Administrator was informed by telephone of the order of stay by the solicitor for the bank (at whose instance, the said order of sale was in the first place obtained), before 9.00 a.m. on that day for the scheduled auction. According to her, the Land Administrator agreed with the said solicitor to delay the auction until 10.45 a.m. by which time, a letter by the said solicitor confirming the order of stay was by agreement, to be delivered to the Land Administrator. The said letter was duly delivered at about 10.25 a.m. but alas, the Land Administrator did not keep his promise and ignored the order of stay despite his knowledge of the same. The bank and not the Land Administrator, could have been the only one really to suffer from the order of stay, it will be observed. The Land Administrator allowed the public auction of the charged property to proceed by 10.00 a.m. and it was completed by 10.15 a.m. by the fall of the hammer on the bid by the intervener (hereafter the successful bidder). We agree with the conclusion of the learned Judge as to what happened as stated.

We also agree with the conclusion of the learned Judge that the original notice of hearing of the original enquiry (in which the original order of sale was obtained), had been duly served on the chargors whose allegation of non-service of the same was groundless. The non-service was one of the two grounds for the chargors' application for the order of stay.

We also agree with the learned Judge that the reserve price of RM500,000 fixed at the original enquiry represented a fair market price and that the price of RM615,000 suggested by the chargors was not acceptable by comparison, the latter price having been based, not on the usual method of comparison with similar sales, as adopted by the chargee's valuers. The Land Administrator had fixed the reserve price at RM500,000 correctly. The inadequacy of the chargee's valuer's price was the other ground for the application for the order of stay.

We also agree with the learned Judge that the excuses of the Land Administrator were unacceptable for proceeding with the auction in the manner aforesaid. The excuses were that he could not rely on the phone call from the solicitor

*a* for the bank because of his previous experience of "prank calls" and further that he should be served with a copy of the order of stay. In our view, service of such a copy of the order of stay was not essential, the essence being that the Land Administrator should have knowledge of it. What he did was highly questionable.

*b* The successful bidder, among other things, filed his summons in chambers for intervening in this originating summons herein as a party and further for the application viz the originating summons herein praying for the order of stay etc. to be dismissed. In the middle of the hearing of the successful bidder's application, the learned Judge directed the Land Administrator to file his summons in chambers for the order of stay to be set aside.

*c* Both the applications of the successful bidder and the Land Administrator were apparently heard together on 12 August 1992, and both applications which were similar though differently worded, were allowed with costs with the consequence that the order of stay was set aside and the application by originating summons herein by the chargors was dismissed. Against this order dated on 12 August 1992, the appeal is now before us.

*d* The reason of the learned Judge for making this impugned order dated 12 August 1992 was to the effect that the order of stay was equivalent to an injunction following the decision of High Court of Borneo in *Ho Kok Thin & Ors v. The Sheriff/Registrar of the High Court of Borneo & Anor* [1989] 3 MLJ 181, by virtue of s. 29(1)(a) of the Government Proceedings Act 1956 and s. 54(d) of the Specific Relief Act 1950, such statutory provisions having been the mainstay of the decision at Borneo. Sections 29 and 54(d) aforesaid are set out below for ease of reference:

*e* Section 29(1) In any civil proceedings by or against the Government the Court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

*f* Provided that -

*g* (a) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but

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may in lieu thereof make an order declaratory of the rights of the parties;

Section 54 An injunction cannot be granted -

- (d) to interfere with the public duties of any department in Malaysia, or with the sovereign acts of a foreign Government.

In *Ho*, the Court there cited *Government of Malaysia v. Lim Kit Siang* [1988] SCR 11 for support.

In *Ho* and also *Lim Kit Siang*, an injunction in each case, was expressly applied for. In *Ho*, the plaintiff asked the High Court for the injunction, by name, to stop the Sheriff/Registrar of the High Court from holding afresh sale (auction) by summons in chambers; and in *Lim Kit Siang*, the plaintiff asked also expressly for an injunction to restrain one United Engineers (M) Bhd from signing some contracts with the Government.

In the instant appeal, injunction was applied for expressly but not granted but an order of stay was only given in terms of one of the prayers. How could the order of stay be treated as an injunction? It was an order of High Court in terms as prayed of prayer (a) of the originating summons herein. True, if the alternative prayers for the relevant restraining orders of the originating summons were granted, then the learned Judge's reasoning could have substance.

Again an order for staying proceedings or for staying the execution of an order of a lower Court or an inferior tribunal (*viz* one of those public authorities or bodies exercising judicial or quasi-judicial functions or otherwise deemed to be acting judicially and amenable to the High Court's supervision either by way of appeal or judicial review), is not an injunction, not only in name, but also for some distinctive dissimilarities which are well indicated in a passage from **Nelson's Law of Injunctions**, 2nd Edn. as follows:

An order of stay in an execution matter is in the nature of a prohibitory order and is addressed to the Court that is carrying out execution. It is not of the same nature as an order allowing an appeal and quashing execution proceedings. That kind of order takes effect immediately it is passed, for such an order takes away the very jurisdiction of the Court executing the decree as there is nothing left to execute thereafter. But a mere order of stay of execution does not take away the

- a* jurisdiction of the Court. All that it does is to prohibit the Court from proceeding with the execution further, and the Court unless it knows of the order cannot be expected to carry it out. Therefore, till the order comes to the knowledge of the Court its jurisdiction to carry on execution is not affected by a stay order which must in the very nature of things be treated to be a prohibitory order directing the executing Court which continues to have jurisdiction to stay its hand till further orders. It is clear that as soon as a stay order is withdrawn, the executing Court is entitled to carry on execution and there is no question of fresh conferment of jurisdiction by the fact that the stay order has been withdrawn. The jurisdiction of the Court is there all along ... In effect, therefore, a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. Further it is equally well settled that the injunction order not being addressed to the Court, if the Court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the Court, and prohibits it from proceeding further, as soon as the Court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That is the only difference between an order of injunction to a party and an order of stay to a Court.

- f* This passage was cited by the learned Judge with approval but its salient points were not followed unfortunately. We approve this passage as representing the correct position.

- g* We would like to mention another well-known dissimilarity. It is that, apart from the Rules of the High Court, the High Court has always that inherent jurisdiction to order stay of proceeding to prevent any abuse of process. Further where a superior Court of record such as High Court and Courts above it, has the jurisdiction or discretion to decide any cause or matter by way of appeal, judicial review or otherwise, such superior Court will have the inherently incidental power in any event to suspend the operation or execution of any order concerned in such cause or matter pending the decision of such Court, but such power will be exercised according to the usual principles applicable thereto, or otherwise judicially, according to fair play and
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common sense. To deny such power would render such appeal or judicial review etc. illusory or an exercise in futility.

In the circumstances we are unable to agree with the learned Judge's view to the effect that an order like the order of stay in the instant appeal is equivalent to an injunction and therefore amenable to the relevant sections of the Government Proceedings Act 1956 and the Specific Relief Act 1950. We find his Lordship's process of interpreting the order of stay and the relevant statutory provisions unacceptable.

We therefore hold that the High Court has jurisdiction to issue an order of stay of sale of charged land to a Land Administrator on any grounds that are sufficient.

It now remains for us to decide whether the order of stay was therefore correctly set aside on merits by the learned Judge for this appeal, in actual terms, is against the setting aside of the order of stay. In view of his Lordship's conclusions as to the reserve price and the due service of the notice of hearing of the enquiry on the chargors of the enquiry in which the reserve price of RM500,000 was fixed and the order of sale was made, we are of the view that the order of stay was properly set aside on 12 August 1992. We would dismiss the appeal (Civil Appeal No 01-31-92).

However, this is not the end of this appeal. Right from the outset of the hearing, we have been troubled by the disobedience of the order of stay on the part of the Land Administrator. After anxious consideration, we do not think that the setting aside of the order of stay so operates as to obliterate such disobedience and to render it harmless. The consideration is anxious because the successful bidder has paid the price of RM500,000 in full, and if we are not mistaken, he has moved also into and occupied the charged property which consists of a bungalow with a swimming pool.

We are of the considered view that an order of a superior Court such as High Court, even if it is e.g. an order obtained *ex-parte* or a default judgment, until it is set aside, must be obeyed by everyone whether its validity is challenged or not, and "it is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until the order is discharged", per Romer, L.J. in *Hadkinson v.*

*a* *Hadkinson* [1952] 2 All ER 567. This passage was quoted with approval and adopted by this Court in *Pembinaan KSY Sdn Bhd v. Lian Seng Properties Sdn Bhd* [1991] 1 MLJ 100. It was stated in *Issacs v. Robertson* [1984] 3 All ER 140 that it was misleading to describe such an order of competent jurisdiction as void or voidable, for every order must be obeyed until it was set aside and "these are not orders which are void *ipso facto* without the need for proceedings to set them aside". One of the reasons is that such a superior Court must be presumed to have the jurisdiction to make an order which it has made. Every order made by a superior Court must be regarded as an order of competent jurisdiction.

Further a superior Court, like the High Court, is considered to be a Court of unlimited jurisdiction in contentious civil matters and is therefore to be distinguished from those inferior tribunals which are established outside the hierarchy of ordinary Courts. Such public authorities and bodies are conferred with limited jurisdiction by various statutes. This condition of such limited jurisdiction has always been one of the primary bases for the judicial review by a superior Court of their decisions on the ground of lack or excess of jurisdiction. A Land Administrator, like the Land Administrator in the instant appeal, the Special Commissioners of Income Tax and various other similar bodies are such inferior tribunals. For the expression of "unlimited jurisdiction", please see *Issacs* at page 103 when Lord Diplock, in passing, also referred to such a superior Court as "a Court of unlimited jurisdiction in the course of contentious litigation."

As distinct from an order of a superior Court, on the other hand, an order of an inferior tribunal can be challenged collaterally as regards its validity in any proceedings in which such validity becomes relevant, without the need to file proceedings first for the very purpose of having it set aside. Generally (but not in all cases), such an order could be disobeyed with impunity without the need for proceedings to set it aside, as was done e.g. in *Eu Finance Bhd v. Lim Yoke Foo* [1982] 2 MLJ 37 FC, when a Land Administrator there, of his own motion, made a second order of sale of some charged land under similar provisions of the National Land Code which was held to be a nullity or no order at all. Abdoalcader J., (as he then was), delivering the judgment of the Federal Court observed at page 39:

*i* ... such an order can be successfully attacked in collateral proceedings: it can be disregarded

and impeached in any proceedings before any Court, or tribunal and whenever it is relied upon...

Similarly, the Privy Council in *Dunlop v. Woolahra Municipal Council* [1982] AC 158, in connection with some building restrictions which were imposed by some Australian local authority and which were *ultra vires*, observed that the person affected "can ignore the purported exercise of such power. It is incapable of affecting his legal rights".

In *Pembinaan KSY supra*, a High Court order, (in that case, a default judgment) was involved. The judgment creditor in respect of this default judgment appeared in Court to support a bankruptcy petition filed by some creditor against a debtor who happened to be also the judgment debtor in respect of the said default judgment. It was argued and the learned Judge agreed and held that the judgment creditor in respect of the said default judgment had no *locus standi* to appear in support of the petitioning creditor as the learned Judge after consideration, held that the default judgment was a nullity and the debtor was entitled to ignore it, (i.e. to attack it collaterally). The learned Judge's decision was set aside on appeal before this Court.

Thus the Land Administrator on 17 August 1989 had disobeyed the order of stay which was still then in force; he had therefore acted illegally. The said public auction was in consequence null and void, please see the relevant part of the passage from **Nelson's Law of Injunctions**, *supra*.

In holding that the public auction was void, we have reached a rather unique position. It will be remembered that it was the disobedience by the Land Administrator of the order of stay that the said public auction was rendered void; what then would be the effect of the setting aside of the same order of stay subsequent to the holding of the said public auction? It will be remembered that we have upheld such setting aside of the order of stay as stated above.

We are of the view that even though the order of stay was subsequently set aside after the said public auction, it would not validate the pre-existing invalidation of the said public auction which was illegally held as explained above.

Another question may then surface arising out of the above, i.e. if the said public auction was void, it having been held in breach of the order

**a** of stay, would not the Land Administrator's application to set aside the order of stay be similarly void? The answer in our view is that there lies a difference between the holding of the said public auction and the filing of the application. It is that the holding of the said public auction was in disobedience of the terms of the order of stay which had to be obeyed before it was set aside in proceedings instituted for the purpose, while the filing of the application to set aside the order of stay itself could not be said to be in disobedience of the order of stay, but was therefore harmless.

**c** For demonstrating the harmlessness of such application to set aside the order of stay, we can draw an analogy between the application to set aside the order of stay and an application by an undischarged bankrupt, without the sanction of the official assignee to rescind a receiving order and an adjudication order in bankruptcy proceedings, see *Re Khoo Kim Hock* [1974] 2 MLJ 29, though sanction was required of the official assignee for commencing any action in Court. It is the basic requirement of justice that plainly enables both applications to be filed.

**e** We are aware that to hold the said public auction as being void while the successful bidder has paid the full purchase price and moved into the charged property will give rise to a great deal of inconvenience.

**f** Convenience is very often incompatible with law and inconvenient consequential orders would have to be made later following our conclusion that the public auction held on 17 August 1989 of the charged property was null and void.

**g** We now deal with the second civil appeal viz Civil Appeal No. 02-362-93, in which, the chargors have appealed against another order of the High Court made on 25 June 1993 granting vacant possession of the charged property to the intervenor, the successful bidder, by way of summary procedure under O. 89 of the Rules of the High Court and further refusing a stay of execution of such summary order for possession of the charged property. In view of what has been just decided in regard to the invalidity of the public auction held on 17 August 1989 in respect of the charged property, it follows that this appeal by the chargors should be allowed even though the order of stay is held by this Court to have been properly set aside by the learned Judge in the Court below. The circumstances thus militate against making an order for costs in favour of

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the chargors, though they have succeeded in this appeal though such costs would have otherwise in normal circumstances followed the event. We therefore make the following formal orders and consequential directions.

In Civil Appeal No. 01-31-92 we therefore dismiss the appeal of the appellants with costs here and below to 2nd respondent (the bank) and the intervener (the successful bidder) but not to the 1st respondent who should be deprived of costs for having acted improperly in disobeying the order of stay. We further make the following further consequential directions in this civil appeal as follows:

- (a) The order of the High Court dated 12 August 1992 is upheld, consequently the order of High Court dated 16 August 1989 is set aside, the originating summons herein dismissed.
- (b) The public auction held on 17 August 1989 in respect of the charged property in question is hereby declared to be null and void subject to the following further directions.
- (c) The 1st respondent or the 2nd respondent as the case may be is to refund RM500,000 received or retained by the 1st respondent or the 2nd respondent as the case may be, to the intervener without interest within 4 months from to-day.
- (d) The 1st respondent is to hold a fresh or another public auction for the sale of the charged property in question within 4 months from to-day with the reserve price at RM500,000, in the usual manner and on the other usual terms and conditions.
- (e) There shall be liberty to apply but only for the purpose of implementing the consequential directions set out above should difficulties ensue in respect of such implementation.

In Civil Appeal No 02-362-93, we allow the appeal of the appellants and set aside the order of the High Court dated 25 June 1993 and we further make the following consequential directions:

- (a) The intervener is to quit and deliver up vacant possession of the charged property in question within 4 months from to-day without being liable to make any payment by way of rent or otherwise, to the respondents for his occupation of the charged property in question since his entry on the charged property.

- a* (b) There shall be liberty to apply but only for the purpose of implementation of such consequential directions.
  - (c) Each party is to bear its own costs.
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